

§ 281.3

7 CFR Ch. II (1–1–06 Edition)

services and other noncertification functions. The State agency shall not contract responsibility for certification activities such as interviews or eligibility determinations. In all cases, the State agency shall retain full responsibility for program administration.

[44 FR 35925, June 19, 1979, as amended by Amdt. 207, 47 FR 52338, Nov. 19, 1982]

§ 281.3 Determination of failure.

(a) *Request for determination of State government agency failure.* FNS shall examine State agency administration of the Food Stamp Program on all or part of a reservation when requested by the ITO, the State agency or at FNS' discretion. When FNS determines that a deficiency in a State agency operation of the Food Stamp Program on all or part of an Indian reservation may be serious enough to warrant a review, FNS shall advise the State agency and the ITO in writing of the alleged deficiencies and of its plans to conduct the review and document deficiencies, if any are found. Subsequent to October 1, 1979 FNS shall complete these reviews within 90 days from receipt of an ITO's or State agency's request except under unusual circumstances such as the receipt of a large number of simultaneous requests.

(b) *Review—(1) Content of the review for State agency performance.* The review shall be designed to determine whether or not the State agency is properly administering the Food Stamp Program on a specific reservation. When an agency of State government is administering the Program on a reservation, FNS shall as a part of the review consult with the ITO about the operation of the Program on the reservation. The review should, depending on the nature of the complaint, include but not be limited to, an analysis of some or all of the following data:

(i) The records of State agency consultation with the ITO required under § 281.2(a);

(ii) The estimated percentage of all eligible Indians on the reservation who are participating the Program;

(iii) The nature and extent of violations, if any, of the 30-day and other processing standards for Indians;

(iv) The percentage of errors made in determining eligibility and/or the amount of benefits overissued or underissued;

(v) Compliance with standards for location and hours of certification and issuance offices as required in § 272.5;

(vi) Compliance with bilingual requirements of this regulation, where appropriate;

(vii) Compliance with nondiscrimination requirements of this regulation;

(viii) Compliance with other significant program requirements;

(ix) Comparison with services provided in all other areas of the State; and

(x) Any other relevant information that becomes available during the course of reviews including information received through contacts with the Indian tribe.

(2) *Finding of no or of minor deficiencies.* If after the review FNS determines either that deficiencies do not exist or that only minor deficiencies exist, FNS shall issue a report documenting its findings to both the State agency and the ITO and shall work closely with the State agency to achieve corrective action.

(c) *Formal warning.* After the review is completed, if FNS determines that major deficiencies exist, a formal warning shall be issued to the State, with a copy to the ITO. At a minimum, such warning shall indicate the State agency deficiencies and shall detail the basis upon which deficiencies were determined. The State shall have 30 days to respond with evidence that it is in compliance or to submit a corrective action proposal under part 276. If satisfactory compliance is achieved by the State agency on deficiencies cited in a formal warning, FNS shall notify the State, with a copy to the ITO, that the warning for those deficiencies is satisfied.

(d) *Determination of failure and sanctions.* If at any time after the formal warning period, or during or after the corrective action period, FNS determines that major deficiencies still exist which the State agency has not

satisfactorily addressed or is not satisfactorily addressing, FNS shall determine State failure and may impose appropriate Federal sanctions on the State agency as specified in part 276.

(e) *ITO operations.* If FNS has determined State failure and FNS has also determined that the ITO is capable of administering a Food Stamp Program in accordance with the terms and requirements for participating State agencies as established in the Act and regulations, then the ITO shall assume administration of the Food Stamp Program on the reservation. The State agency shall continue to administer the Food Stamp Program on the reservation until an effective termination and transition arrangement has been completed in accordance with § 281.8.

§ 281.4 Determining Indian tribal organization capability.

(a) *Determining capability of ITO.* If the ITO wishes to administer its own Food Stamp Program on the reservation FNS shall determine the ITO's potential capability for administering the Food Stamp Program in accordance with the criteria listed in § 281.4(b). FNS shall begin to evaluate the ITO's capability for all aspects of Food Stamp Program administration, allowing for fulfillment of that potential through necessary training and technical assistance, not later than the date of the issuance of the formal warning to the State agency.

(b) *ITO responsibility.* (1) The ITO must satisfy FNS that it is capable (if provided with any needed training and technical assistance) of administering the Food Stamp Program effectively and efficiently, and of complying with all provisions of the Food Stamp Act of 1977, as amended, and the regulations of this chapter, including provisions governing quality control procedures, fraud determinations, and establishment and collection of claims for both Indian and any non-Indian participants. The ITO shall provide FNS with the following information:

(i) *Operation of government programs.* The ITO shall provide FNS a list of all government programs that the ITO administers and has recently administered. FNS may ask the ITO to provide the names of appropriate officials of

the government organizations having jurisdiction over these programs so FNS can obtain all relevant audits, GAO reports, program evaluations and any other documents pertaining to the effectiveness and efficiency of tribal administration of these programs. The ITO shall also provide FNS a list of its recent contractual responsibilities, if any, for the Food Stamp Program under § 281.2(b).

(ii) *Fiscal capabilities.* The ITO shall provide FNS documentation of its bookkeeping and accounting procedures, including procedures in use for fiscal accountability under part 277 and for other government programs that the ITO administers.

(iii) *Projected certification and issuance facilities.* The ITO shall provide FNS with a description of the location of projected certification and issuance facilities.

(iv) *Fraud hearings and claims.* The ITO shall provide FNS with a description of how it will pursue fraud hearings and claims against Indian and non-Indian participants.

(v) *Staffing.* The ITO shall provide FNS with sufficient information to determine that personnel who will be used in the certification process will be employed under standards equivalent to current standards for a Merit System of Personnel Administration or any standards later prescribed by the Office of Personnel Management under section 208 of the Intergovernmental Personnel Act of 1970.

(vi) *Civil rights assurance.* The ITO shall provide FNS an assurance that the ITO shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), the Age Discrimination Act of 1975 (Pub. L. 94-135), the Rehabilitation Act of 1973 (Pub. L. 99-112), section 504, and section 11(c) of the Food Stamp Act of 1977 and all pertinent regulations or directives to the effect that no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be denied benefits or otherwise be subject to discrimination under the Food Stamp Program. Where appropriate, FNS shall consider the adequacy of measures taken by the ITO to ensure that there shall be no discrimination.